IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 553 OF 2007
IN
SUMMONS FOR JUDGMENT NO. 154 OF 2007
IN
SUMMARY SUIT NO. 3254 OF 2006

Kulbhushan Gupta ...Appellant
(Ori. Defendant)

V/s.

Dnyansagar Litho Press ...
Respondent

(Ori. Plaintiff)

Mr. A.C. Singh i/by Mr. S.R. Saudagar for the Appellant

Mr. K.K. Tated for the Respondent.

CORAM: **J.N. PATEL AND A.A. SAYED, JJ.**

DATE: **AUGUST 17, 2007**

P.C.:-

1. Heard.

2. The appeal has been preferred by the original defendant, who has been granted conditional leave to defend the suit by the learned trial Court.

3. The respondent (original plaintiff) filed a summary suit against the appellant (defendant) for recovery of a sum of Rs.25,59,848/- with further interest at the rate of 18% per annum from the date of filing of the suit on the principal amount of Rs.17,74,718/- till date of payment and/or realisation. The suit claim is based on the fact that the appellant (defendant) placed an order for printing of publicity material for his picture "*Police Force – An Inside Story*" by his letter dated 11th October, 2003; and as per the order placed by the appellant (defendant), the plaintiff prepared all the publicity material for the defendant and handed over the same to various parties; and in spite of the plaintiff having called upon the defendant to make payment of the outstanding amount of Rs.22,74,718/-, he has failed to pay the same. The plaintiff has pleaded that the defendant, by his letter dated 15th October, 2006, has admitted his liability to the tune of Rs.22,74,718/-, and made part-payment of Rs.5 lakhs to the plaintiff and plaintiff's sister concern. In spite of that, he has failed to pay balance amount. It is also the case of the plaintiff that at the instance of the defendant, one of his distributors has paid certain amount, which has been accounted for and a sum of Rs.17,74,718/- is outstanding to the

plaintiff along with interest at the rate of 18% per annum; and as it is an admitted claim, summary suit under provisions of Order XXXVII, Rule 2, of the Code of Civil Procedure, 1908, came to be filed.

4. In the reply, the appellant (defendant) took up the plea that the claim cannot be filed under Order XXXVII. It is contended that the appellant (original defendant) is entitled to unconditional leave to defend, as, even *prima facie*, the plaintiff has not been able to make out any case in support of its case, and the payment has been recovered by the respondent (original plaintiff) from the distributors against the publicity material, which was supplied to the respective distributors of various territories.

5. On going through the plaint, the application for leave to defend the suit and the impugned order, what we find is that the learned trial Court has taken into consideration the stand taken in defence that the appellant (original defendant) has made out a case to defend the suit; but in view of the fact that the counsel appearing for the appellant, on instructions, made a statement that

the claim of the plaintiff would not be in excess of an amount of Rs.6,84,000/-, the learned trial Court granted leave to defend the suit to the appellant, subject to depositing an amount of Rs.8,00,000/- within a period of two months with liberty to the plaintiff to withdraw an amount of Rs.6,84,000/- on furnishing security to the satisfaction of the Prothonotary and Senior Master.

6. We do not find that the order is unfair or unjust so as to call for any interference.

7. Before us, the learned counsel for the plaintiff even made an offer to settle the claim if the defendant pays the principal amount claimed in the suit, which is not acceptable to the appellant (original defendant).

8. We, therefore, do not find that there is any merit in the challenge to the impugned order. The appeal is dismissed with costs.

J.N. PATEL, J.

A.A. SAYED, J.